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*Kelly Toys Holdings, LLC*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KELLY TOYS HOLDINGS, LLC,

*Plaintiff*

v.

ABDERAH-54, ACHHER-94, ALLYOUNEED-22,  
BELLA\_EWALLET1990, BUYSMART\_58, CHELAKE-0,  
COLORLINE\_MARKET, CUXVWWMVIRA1\_9,  
DIGI\_STORES-57, DIL-MIC\_ALL\_IN\_ONE\_SHOP,  
DUMINDA\_1971, ELECRO0090, ERAATHUK\_0, ES-  
SELLER, FLUORESCENCE\_CORNUCOPIA,  
GEWENDELIN, HAPPYSOLUTIONS,  
HARAMBAGFERN\_0, INSH.AAF, IZY\_MAKAARA,  
JIWU7878, KADIL-8021, KADLIANA, KAVEESHASHO\_84,  
KAVMADU5539, LMFERNANDZ\_STORE, LUGENA-WJ,  
MADU\_1994, MENGKEYAO, NEWERA\_SHOPPING,  
NICEDELIN, RAPTER\_STORES, RECKMANAZA,  
RV\_E\_STORE, SANGEETH\_SPACE, SENEVIMART,  
SHOPPING\_BAY\_351, SILVA\_LINESTORE93,  
SOYSA\_GALLERY\_STORE\_1988, SPTRADERS-46, STEV-  
STORE37, SUDDAR92, SUN-LU, SUPER-JIANAI,  
SURESHSL97, THOSANMENDI-0, TUOU-0,  
UMAYANISHOP, WIXMART and YAPA\_SHOP61,

*Defendants*

**CIVIL ACTION No.  
21-cv-8433 (RA)**

**FINAL DEFAULT  
JUDGMENT AND  
PERMANENT  
INJUNCTION ORDER**

**GLOSSARY**

<b><u>Term</u></b>	<b><u>Definition</u></b>	<b><u>Docket Entry Number</u></b>
<b>Plaintiff or Kelly Toys</b>	Kelly Toys Holdings, LLC	N/A
<b>Defendants</b>	Abderah-54, Achher-94, Allyouneed-22, Bella_Ewallet1990, Buysmart_58, Chelaks-0, Cuxvwwmvira1_9, Digi_Stores-57, Dil-Mic_All_In_One_Shop, Duminda_1971, Electro0090, Eraathuk_0, Es-Seller, Fluorescence_Cornucopia, Gewendelin, Happysolutions, Harambagfern_0, Insh.Aaf, Izy_Makaara, Jiwu7878, Kadil-8021, Kadliana, Kaveeshasho_84, Kavmadu5539, Lmfernandz_Store, Lugena-Wj, Madu_1994, Mengkeyao, Newera_Shopping, Nicedelin, Rapter_Stores, Reckmanaza, Rv_E_Store, Sangeeth_Space, Senevimart, Shopping_Bay_351, Silva_Linestore93, Soysa_Gallery_Store_1988, Spraders-46, Stev-Store37, Suddar92, Sun-Lu, Super-Jianai, Sureshsl97, Thosanmendi-0, Tuou-0, Umayanishop, Wixmart and Yapa_Shop61	N/A
<b>eBay</b>	eBay.com, a San Jose, California-based online marketplace and e-commerce platform owned by eBay Inc., a Delaware corporation, that allows manufacturers and other third-party merchants, like Defendants, to advertise, distribute, offer for sale and/or sell in what it characterizes as either auction-style or fixed-price formats and ship their retail products, which, upon information and belief, originate from China, among other locations, directly to consumers worldwide and specifically to consumers residing in the U.S., including in New York	N/A
<b>Sealing Order</b>	Order to Seal File entered on October 6, 2021	1
<b>Complaint</b>	Plaintiff's Complaint filed on October 13, 2021	7
<b>Application</b>	Plaintiff's <i>Ex Parte</i> Application for: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts (as defined <i>infra</i> ) and Defendants' Assets (as defined <i>infra</i> ) with the Financial Institutions (as defined <i>infra</i> ); 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery filed on October 13, 2021	10-13
<b>Kelly Dec.</b>	Declaration of Jonathan Kelly in Support of Plaintiff's Application	12

<b>Futterman Dec.</b>	Declaration of Danielle S. Futterman in Support of Plaintiff's Application	11
<b>TRO</b>	1) Temporary Restraining Order; 2) Order Restraining Merchant Storefronts and Defendants' Assets with the Financial Institutions; 3) Order to Show Cause Why a Preliminary Injunction Should Not Issue; 4) Order Authorizing Bifurcated and Alternative Service; and 5) Order Authorizing Expedited Discovery entered on October 22, 2021	6
<b>PI Show Cause Hearing</b>	November 15, 2021 hearing to show cause why a preliminary injunction should not issue	N/A
<b>PI Order</b>	November 29, 2021 Preliminary Injunction Order	25
<b>User Account(s)</b>	Any and all websites and any and all accounts with online marketplace platforms such as eBay, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them	N/A
<b>Merchant Storefronts</b>	Any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in Counterfeit Products, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them	N/A
<b>Squishmallows Registrations</b>	U.S. Trademark Registration Nos.: 5,454,574 for "SQUISHMALLOW" for goods in Class 28; 6,137,521 for "FLIP A MALLOW" for goods in Class 28; 5,962,289 for "MYSTERY SQUAD" for goods in Class 28; and 2,029,047 for "KELLYTOY" for goods in Class 28	N/A
<b>Squishmallows Applications</b>	U.S. Trademark Serial Application Nos.: 88/471,796 for "SQUISHMALLOWS HUGMEES" for goods in Class 28 and 90/676,140 for "ORIGINAL SQUISHMALLOWS," for goods in Class 28	N/A
<b>Squishmallows Marks</b>	The marks covered by the Squishmallows Registrations and Squishmallows Applications	N/A
<b>Squishmallows Works</b>	The works covered by the U.S. copyright registrations listed in Exhibit C to the Complaint	N/A
<b>Squishmallows Products</b>	A line of loveable buddies made with a super soft, marshmallow-like texture that come in a variety of sizes from 3.5-inch clip-ons to extra-large 24 inch plush toys,	N/A

	and have expanded to other styles including Hug Mees, Stackables, Mystery Squad and Flip-A-Mallows	
<b>Counterfeit Products</b>	Products bearing or used in connection with the Squishmallows Marks and/or Squishmallows Works, and/or products in packaging and/or containing labels and/or hang tags bearing the Squishmallows Marks and/or Squishmallows Works, and/or bearing or used in connection with marks and/or artwork that are confusingly or substantially similar to the Squishmallows Marks and/or Squishmallows Works and/or products that are identical or confusingly or substantially similar to the Squishmallows Products	N/A
<b>Defendants' Assets</b>	Any and all money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad)	N/A
<b>Defendants' Financial Accounts</b>	Any and all financial accounts associated with or utilized by any Defendants or any Defendants' User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad)	N/A
<b>Financial Institutions</b>	Any banks, financial institutions, credit card companies and payment processing agencies, such as PayPal Inc. ("PayPal"), Payoneer Inc. ("Payoneer"), PingPong Global Solutions, Inc. ("PingPong") and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of Defendants	N/A
<b>Third Party Service Providers</b>	Online marketplace platforms, including, without limitation, those owned and operated, directly or indirectly by eBay, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise	N/A
<b>eBay Discovery</b>	The report identifying Defendants' Infringing Item Number, Seller ID, Quantity Sold, GMV and Auction Title, among other things, provided by counsel for eBay to Epstein Drangel pursuant to the expedited discovery ordered in both the TRO and PI Order	N/A
<b>Plaintiff's Motion for Default Judgment</b>	Plaintiff's application for an Order to Show Cause Why Default Judgment and a Permanent Injunction Should Not be Entered Against Defendants filed on February 25, 2021	36-39

<b>Ioannou Aff.</b>	Affidavit by Karena K. Ioannou in Support of Plaintiff's Motion for Default Judgment	37
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This matter comes before the Court by motion filed by Plaintiff for the entry of final judgment and permanent injunction by default against Defendants for Defendants' trademark infringement, trademark counterfeiting and copyright infringement arising out of Defendants' unauthorized use of Plaintiff's Squishmallows Marks and/or Squishmallows Works including, without limitation, in their manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying or offering for sale and/or selling and/or sale of Counterfeit Products.<sup>1</sup>

The Court, having considered the Memorandum of Law and Affidavit of Karena K. Ioannou in support of Plaintiff's Motion for Default Judgment and a Permanent Injunction Against Defendant, the Certificates of Service of the Summons and Complaint, the Certificate of the Clerk of the Court stating that no answer has been filed in the instant action, and upon all other pleadings and papers on file in this action, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

**I. Defendants' Liability**

- 1) ORDERED, ADJUDGED AND DECREED that judgment is granted in favor of Plaintiff as to the first, second and fifth causes of action pleaded in the Complaint (trademark counterfeiting, trademark infringement and copyright infringement) against Defendants Abderah-54, Achher-94, Allyouneed-22, Bella\_Ewallet1990, Buysmart\_58, Cuxvwwmvira1\_9, Digi\_Stores-57, Dil-Mic\_All\_In\_One\_Shop, Duminda\_1971, Eraathuk\_0, Es-Seller, Fluorescence\_Cornucopia, Gewendelin, Happysolutions, Harambagfern\_0, Insh.Aaf, Izy\_Makaara, Jiwu7878, Kadil-8021, Kadliana, Kaveeshasho\_84, Kavmadu5539, Lmfernandz\_Store, Madu\_1994, Newera\_Shopping, Rapter\_Stores,

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<sup>1</sup> Where a defined term is referenced herein and not defined herein, the defined term should be understood as it is defined in the Glossary.

Reckmanaza, Sangeeth\_Space, Senevimart, Shopping\_Bay\_351, Silva\_Linestore93, Soysa\_Gallery\_Store\_1988, Spraders-46, Stev-Store37, Suddar92, Sun-Lu, Sureshs197, Thosanmendi-0, Tuou-0, Umayanishop, Wixmart and Yapa\_Shop61;

- 2) ORDERED, ADJUDGED AND DECREED that judgment is granted in favor of Plaintiff as to the fifth causes of action pleaded in the Complaint (copyright infringement) against Defendants Chelaks-0, Elecro0090, Lugena-Wj, Mengkeyao, Nicedelin, Rv\_E\_Store and Super-Jianai.

## **II. Damages Awards**

- 3) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that because it would serve the compensatory and punitive purposes of the Lanham Act's prohibitions on trademark counterfeiting and infringement and the Copyright Act's prohibitions on willful infringement, and because Plaintiff has sufficiently set forth the basis for the statutory damages requested in its Motion for Default Judgment, the Court awards Plaintiff fifty thousand Dollars (\$50,000.00) ("Defendants' Individual Damages Award") in statutory damages against each of the Forty-Nine (49) Defendants, as identified in Appendix A, pursuant to 15 U.S.C. § 1117(c) and Section 17 U.S.C. § 504(c) of the Copyright Act for a total of Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000.00) ("Defendants' Collective Damages Award"), as well as post-judgment interest at the statutory rate set forth in 28 U.S.C. § 1961(a).

## **III. Permanent Injunction**

- 4) IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defendants, their respective officers, agents, servants, employees, successors and assigns, and all persons acting in concert with or under the direction of Defendants (regardless of whether located in the United States or abroad) who receive actual notice of this Order are permanently enjoined and restrained from:

- A. manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products or any other products bearing the Squishmallows Marks and/or Squishmallows Works and/or marks and/or artwork that are confusingly or substantially similar to, identical to and constitute a counterfeiting and/or infringement of the Squishmallows Marks and/or Squishmallows Works;
- B. directly or indirectly infringing in any manner Plaintiff's Squishmallows Marks and/or Squishmallows Works;
- C. using any reproduction, counterfeit, copy or colorable imitation of Plaintiff's Squishmallows Marks and/or Squishmallows Works to identify any goods or services not authorized by Plaintiff;
- D. using Plaintiff's Squishmallows Marks and/or Squishmallows Works, or any other marks and/or artwork that are confusingly or substantially similar to the Squishmallows Marks and/or Squishmallows Works on or in connection with the manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Counterfeit Products;
- E. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products; (ii) any computer files, data, business records, documents or any other records or evidence relating to:
  - i. Defendants' User Accounts and/or Merchant Storefronts;
  - ii. Defendants' Assets; and
  - iii. the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products by



Defendants and by their respective officers, employees, agents, servants and all persons in active concert or participation with any of them; and

F. effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Accounts, Merchant Storefronts or any other means of importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order.

5) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants must deliver up for destruction to Plaintiff any and all Counterfeit Products and any and all packaging, labels, tags, advertising and promotional materials and any other materials in the possession, custody or control of Defendants that infringe any of Plaintiff's trademarks, copyrights or other rights including, without limitation, the Squishmallows Marks and/or Squishmallows Works, or bear any marks and/or artwork that are confusingly or substantially similar to the Squishmallows Marks and/or Squishmallows Works pursuant to 15 U.S.C. § 1118;

**IV. Dissolution of Rule 62(a) Stay**

6) IT IS FURTHER ORDERED, ADJOURNED AND DECREED, as sufficient cause has been shown, the 30-day automatic stay on enforcing Plaintiff's judgment, pursuant to Fed. R. Civ. Pro. 62(a) is hereby dissolved.


**V. Miscellaneous Relief**

- 8) IT IS FURTHER ORDERED, ADJOURNED AND DECEED that the Court releases the Five Thousand U.S. Dollar (\$5,000.00) security bond that Plaintiff submitted in connection to this action to counsel for Plaintiff, Epstein Drangel, LLP, 60 East 42<sup>nd</sup> Street, Suite 1250, New York, NY 10166.
- 9) IT IS FURTHER ORDERED, ADJOURNED AND DECEED that this Court shall retain jurisdiction over this matter and the parties in order to construe and enforce this Order.

The Clerk of Court is respectfully directed to enter judgment consistent with this Order and close the case.

**SO ORDERED.**

Dated: June 17, 2022  
New York, New York

  
\_\_\_\_\_  
HON. RONNIE ABRAMS  
UNITED STATES DISTRICT JUDGE

## APPENDIX A

NO.	DEFAULTING DEFENDANT	STATUTORY DAMAGES REQUESTED
1	abderah-54	\$50,000.00
2	achher-94	\$50,000.00
3	allyouneed-22	\$50,000.00
4	bella_ewallet1990	\$50,000.00
5	buysmart_58	\$50,000.00
6	chelaks-0	\$50,000.00
7	cuxvwwmvira1_9	\$50,000.00
8	digi_stores-57	\$50,000.00
9	dil-mic_all_in_one_shop	\$50,000.00
10	duminda_1971	\$50,000.00
11	elecro0090	\$50,000.00
12	eraathuk_0	\$50,000.00
13	es-seller	\$50,000.00
14	fluorescence_cornucopia	\$50,000.00
15	gewendelin	\$50,000.00
16	happysolutions	\$50,000.00
17	harambagfern_0	\$50,000.00
18	insh.aaf	\$50,000.00
19	izy_makaara	\$50,000.00
20	jiwu7878	\$50,000.00
21	kadil-8021	\$50,000.00
22	kadliana	\$50,000.00
23	kaveeshasho_84	\$50,000.00
24	kavmadu5539	\$50,000.00
25	lmfernandz_store	\$50,000.00
26	lugena-wj	\$50,000.00
27	madu_1994	\$50,000.00
28	mengkeyao	\$50,000.00
29	newera_shopping	\$50,000.00
30	nicedelin	\$50,000.00
31	rapter_stores	\$50,000.00
32	reckmanaza	\$50,000.00
33	rv_e_store	\$50,000.00
34	sangeeth_space	\$50,000.00
35	senevimart	\$50,000.00
36	shopping_bay_351	\$50,000.00
37	silva_linestore93	\$50,000.00
38	soysa_gallery_store_1988	\$50,000.00
39	sptraders-46	\$50,000.00

40	stev-store37	\$50,000.00
41	suddar92	\$50,000.00
42	sun-lu	\$50,000.00
43	super-jianai	\$50,000.00
44	sureshsl97	\$50,000.00
45	thosanmendi-0	\$50,000.00
46	tuou-0	\$50,000.00
47	umayanishop	\$50,000.00
48	wixmart	\$50,000.00
49	yapa_shop61	\$50,000.00
		\$2,450,000.00